No. 02-1416

IN THE

Supreme Court of the United States

ROADWAY EXPRESS, INC.,

Petitioner,

v.

RAYMOND FISKE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF IN OPPOSITION

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SUMMARY OF THE ARGUMENT

The Maryland Court of Special Appeals in *Fiske v. Roadway Express, Inc.* properly refused to apply the Full Faith and Credit Clause of the United States Constitution after it carefully evaluated and applied the relevant Maryland and Supreme Court cases which recognized that this case is governed by the "[U]nmistakable language" standard described in *Industrial Comm'n of Wis. v. McCartin*, 330 U.S. 622 (1947) and left intact by the Supreme Court in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980).

ARGUMENT

The Maryland Court of Special Appeals opined that *Fiske v. Roadway Express, Inc.* would be decided "[B]y reference to the Full Faith and Credit Clause of the United States Constitution as it has been applied to sequential workers' compensation actions in sister states". App. 8.

The Maryland Court further recognized that the issue in *Fiske* was one which was not determined "[O]n a clean slate" App. 8. and would be decided by looking to a line of Maryland and Supreme Court cases beginning with the Supreme Court's decisions in *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943) [*,reh'g denied*, 321 U.S. 802 (1944) and *Industrial Comm'n of Wis. v. McCartin*, 330 U.S. 622 (1947), *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980) and the Maryland Court of Appeals decision in *Wood v. Aetna Casulty and Surety Co.*, 260 Md. 651 (1971). App. 8-11.

The *Fiske* court concluded that the Supreme Court in *Thomas* left intact the "[U]nmistakable language" standard

as described by *McCartin* when it expressly refused to overrule its previous ruling in *McCartin* App. 10.

After its analysis, the Maryland Court of Special Appeals opinion below answered Petitioner's contentions unequivocally when it quoted from the holding of the Maryland Court of Appeals in *Wood*:

> "'[A]n award already obtained under the workmen's compensation act of one state would not bar a proceeding under the applicable state act (provided the amount paid by a prior award in the first state will be credited on the second award), *unless the act under which the award was first made was designed to preclude recovery of a further award under another state's law.*'
>
> That has been and remains the law of Maryland . . ." App. 11.

Petitioner's further assertion that the Court of Special Appeals decision failed to consider "[P]ublic policy considerations" is not supported by the Supreme Court's analysis in *Thomas* which the Maryland Court of Special appeals correctly characterized as expressly refusing to overrule *McCartin's* holding. App. 10.

Finally, the Supreme Court in *Thomas* held:

> "[T]hat a State has no legitimate interest within the context of our federal system in preventing another State from granting a supplemental compensation award when the second State would have had the power to apply its workmen's

compensation law in the first instance. The Full Faith and Credit Clause should not be construed to preclude successive workmen's compensation awards. Accordingly, *Magnolia Petroleum Co. v. Hunt* should be overruled." *Thomas*, 448 U.S. at 289-290

CONCLUSION

Therefore, for the reasons stated above the Petitioner's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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